

GUIDELINES FOR PROTECTING CULTURAL RESOURCES



**Handbook H-8120
Bureau of Land Management, Utah**

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I. Introduction

These guidelines provide direction for protecting cultural resources from natural or human-caused deterioration, and for recovering significant cultural resource data to mitigate the adverse effects of proposed land uses in accordance with Utah's BLM-SHPO Protocol. This handbook supplements guidance found in Bureau Manual 8120, Protecting Cultural Resources.

A. Policy. Utah policy for protecting cultural resources is to:

- Adequately identify and evaluate cultural resources which may be affected by a proposed land use.
- Take into account the effects of proposed land uses upon cultural resources and take reasonable precautions to ensure these land uses do not inadvertently impact cultural resources.
- Where feasible, plan, locate and/or design Bureau land use activities to avoid adversely affecting cultural resources.
- Through inventory, detailed recording, data recovery or other means, mitigate adverse effects on cultural resources caused by proposed land uses when avoidance is not feasible.
- Consider physical and administrative protection measures for cultural resources undergoing or threatened by deterioration or displacement.
- Afford physical protection commensurate with (1) the importance of the cultural resource, (2) the threat of deterioration, (3) the uses determined appropriate through evaluation and planning, and (4) the qualities which qualify the property for the National Register, and only to the extent necessary to maintain the property's present condition or situation.

The policies and procedures addressed in this handbook are generally appropriate to all land use activities whether initiated by the BLM or land use applicants. Specific guidance relating to the following is appended to this handbook:

- ▶ Utah BLM-SHPO Protocol Agreement, Appendix 1
- ▶ Oil and gas activities, Appendix 2
- ▶ Review of mining notices, Appendix 3
- ▶ Processing mineral patent cases, Appendix 4
- ▶ Prescribed burning, Appendix 5
- ▶ Split estate, Appendix 6
- ▶ Abandoned property on mining claims, Appendix 7
- ▶ Review of withdrawal actions, Appendix 8
- ▶ Protecting cultural resources along BLM roads and county roads, Appendix 9
- ▶ Grazing permit leases/renewals, Appendix 10

B. Types of Deterioration. In general, the physical changes which could affect the values of a cultural property can be summarized in the following categories:

1. Loss of elements. The importance of a cultural property is often dependent upon the physical, chemical, functional and aesthetic characteristics of the property. Natural weathering, decay, vandalism and construction activities can remove elements which originally were part of a cultural property. This loss affects the completeness and accuracy of the information used by scientists and recreation interpreters, and influences the

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importance of the property for traditional uses.

2. Modifications of Characteristics or Physical Relationships. Effective scientific use of a cultural property is dependent upon the vertical and horizontal measurements among the elements of the property and the context of the property itself. Even partial displacement of original relationships lowers the reliability, or may completely negate the significance, of such measurements in reconstructing the activities and sequence of events which occurred at the site.

3. Intrusive Elements. Intrusions or alterations to a cultural property or its setting may affect the integrity of the property. Structural additions, graffiti, and surrounding audio or visual intrusions may be inconsistent with the original cultural resource values and may affect the scientific or aesthetic importance of the property. Traditional uses of cultural properties can be impacted by modern intrusions which are out of character with the values (e.g., sacred or ceremonial) ascribed to the resource.

II. Determining Effects of Proposed Actions

Field Managers, with the assistance of their cultural resource staffs, are responsible for identifying and assessing the effects of proposed actions on cultural properties in compliance with Section 106 of the National Historic Preservation Act. The process described in Sections II.A through II.D below will be followed in meeting this responsibility for all undertakings covered by the Utah Protocol and thus will not always require case by case review by the State Historic Preservation Officer (SHPO). Any BLM manager who elects not to follow the process set forth in the Utah protocol, will comply with 36 CFR 800 procedures regarding individual undertakings. Bureau responsibility for cultural resources on non-Federal lands is set forth in Manual Sections 8100.07 and 8120.06D.

A. Determining if Cultural Properties May be Affected. Before initiating or authorizing a proposed action which meets the definition of undertaking in Section 301(7) of the National Historic Preservation Act, the responsible Field Manager will:

1. Determine the undertaking's Area of Potential Effects, i.e., the geographic area or areas within which the action may cause changes in the character or use of historic properties, if any such properties exist.
2. Review existing information on cultural properties potentially affected by the action, including information concerning the likelihood that unidentified cultural properties exist in the Area of Potential Effects.
3. Seek information in accordance with BLM land use planning and environmental review processes from Indian tribes and other parties likely to have knowledge of or concerns with cultural properties in the Area of Potential Effects. Guidelines for consulting with Indian tribes are provided in Section IV of this handbook.
4. Determine the need for further actions such as field inventory to identify cultural properties that may be affected by the action, and make a reasonable and good faith effort to identify those properties (see Utah Handbook H-8110).

B. Determining if National Register Eligible Properties May be Affected. The Field Manager will evaluate potentially affected cultural properties by applying the National Register criteria and by determining the properties' most appropriate uses (see Utah Handbook H-8110). National Register eligibility will be determined as follows:

1. If the Field Manager finds that a cultural property meets one or more of the criteria specified in 36 CFR 60.4, the property will be considered eligible for the National Register for purposes of complying with Section 106 of the National Historic Preservation Act.
2. If the Field Manager finds that a cultural property does not meet the criteria specified in 36

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CFR 60.4, the property will be considered not eligible for the National Register for purposes of complying with Section 106 of the National Historic Preservation Act.

C. Assessing Effects on Cultural Properties.

1. No Historic Properties Affected. If the Field Manager finds (a) that no National Register listed or eligible cultural properties exist in an undertaking's Area of Potential Effects, or (b) the undertaking has been redesigned or relocated to avoid all effects on National Register listed or eligible properties, or (c) a National Register listed or eligible property exists within an undertaking's Area of Potential Effects, but the undertaking would not alter the characteristics which qualify the property for the National Register, the undertaking will be considered to have "no effect" on historic properties. The Field Manager will document this finding, and the undertaking may proceed.

2. Historic Properties Affected. If the Field Manager finds that an undertaking will affect National Register listed or eligible cultural properties, he or she will apply the Criteria of Adverse Effect in 36 CFR 800 to determine whether the effect of the undertaking should be considered adverse and consult with the SHPO.

a. No Adverse Effect Found. If the Field Manager finds that the Criteria of Adverse Effect are not met, or the undertaking is modified or conditions imposed to avoid adverse effects, the undertaking will be considered to have "no adverse effect." The Field Manager will document this finding and may proceed with the undertaking after the protective modifications or conditions are implemented.

b. Adverse Effect Found. If the Field Manager determines that the undertaking will have an "adverse effect", he or she will document this finding, consult with SHPO and make a reasonable and good faith effort to avoid or reduce adverse effects through treatment or other mitigation measures. The undertaking may proceed after the mitigation has been completed.

D. Documenting Compliance. For each undertaking, determinations of National Register eligibility, findings of effect, and decisions on treatment or other measures to avoid or mitigate adverse effects will be documented on the Annual Project Log. The Field Manager will provide this documentation to the SHPO annually by October 30th.

E. Consultation with SHPO. Undertakings meeting one or more of the thresholds for case-by-case review as defined in the Utah Protocol will require consultation with the SHPO. The Field Manager will consult with, and seek the concurrence of, the SHPO when determining (1) undertakings affecting National Register eligible or listed properties, (2) land exchanges, land sales, Recreation and Public Purpose leases, and transfers, (3) when BLM professional staff lack the appropriate regional experience or professional expertise, and until performance is mutually acceptable to the BLM Deputy Preservation Officers, and (4) when BLM's professional cultural resources staff wishes to bring a particular project to the attention of SHPO.

If the Field Manager and the SHPO cannot agree on the National Register eligibility of a cultural property, the Field Manager will request a formal determination from the Keeper of the Register. Disagreements between the Field Manager and SHPO on other aspects of the Section 106 compliance process will be referred to the BLM Preservation Board, and final decisions will be made by the Utah State Director.

So long as BLM's National Cultural Programmatic Agreement remains in effect, SHPO consultation will follow the terms of the Utah Protocol. Should the National Programmatic Agreement be terminated for any reason, the Utah Protocol will likewise be suspended. In that event, Section 106 consultation with the SHPO will comply with 36 CFR 800 procedures for individual undertakings.

F. Consultation with Advisory Council and SHPO. In accordance with the National BLM Cultural

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Resources Programmatic Agreement, Section 106 consultation with the Advisory Council on Historic Preservation (as well as the SHPO) will be necessary in the following cases:

- a. Non-routine interstate and/or interagency projects or programs. Examples are interstate pipelines or transmission lines which involve multiple jurisdictions and require the preparation of Environmental Impact Statements.
- b. Undertakings directly and adversely affecting National Historic Landmarks or National Register listed properties determined to be of national significance in accordance with Chapter V of National Register Bulletin No. 16A. In addition to properties designated nationally significant, the State Director and SHPO may agree that an undesignated property should be listed as nationally significant. Such a property will be subject to consultation with the SHPO and Council if it would be directly and adversely affected by an undertaking.
- c. Highly controversial undertakings when Council review is requested by the BLM, the SHPO, an Indian tribe, a local government, or an applicant for a BLM authorization. Controversial undertakings are understood to be those which have received a high level of media attention and/or have been brought to the attention of BLM's Washington Office through requests for assistance.
- d. Undertakings in which a member of an Indian tribe or the interested public requests the Council to review determinations made by BLM or the SHPO before the final decision has been made.

G. Consultation on Undertakings Affecting Tribal Lands. If an Indian tribe has been approved by the Secretary to assume the Section 106 responsibilities of the SHPO on tribal lands under Section 101(d)(2) of the National Historic Preservation Act, the Field Manager will consult with the designated Tribal Historic Preservation Officer (THPO) in lieu of the SHPO regarding proposed BLM undertakings occurring on or affecting historic properties on tribal lands. Tribal lands are lands within the exterior boundaries of an Indian reservation.

If an Indian tribe has not assumed the Section 106 responsibilities of the SHPO on tribal lands under Section 101(d)(2) of the National Historic Preservation Act, the Field Manager will consult with a representative designated by the Indian tribe in addition to the SHPO regarding proposed BLM undertakings occurring on or affecting historic properties on tribal lands.

The National BLM Cultural Resources Programmatic Agreement and Utah Protocol do not apply to tribal lands. Therefore, Section 106 compliance on tribal lands must be carried out according to the procedures of 36 CFR 800 unless agreements with the tribes have been reached specifying alternative compliance procedures.

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III. Treatment to Avoid or Mitigate Adverse Effects

If a proposed land use or an existing land use has the potential for affecting the characteristics which contribute to the uses(s) determined appropriate for a cultural property, or the qualities which qualify the property for the National Register, treatment should be considered. The Bureau's preferred strategy is to avoid potential adverse effects on cultural properties. If avoidance is imprudent or infeasible, a range of alternative treatments may be recommended to mitigate adverse effects, including data recovery, stabilization, monitoring, protective barriers and signs, or other physical and administrative measures.

A. Data Recovery. Data recovery methods may be used to preserve information from cultural properties which cannot be preserved in place and which have primarily scientific values, whether the properties are threatened by natural forces, proposed land uses, or unauthorized uses.

1. Data Recovery Plan. All data recovery efforts must be guided by a written plan including a research design to provide the context and justification for, and a detailed description of, the proposed work. The plan must be adequate for documenting compliance with Section 106 of the National Historic Preservation Act and for providing a framework for contract preparation if necessary. The data recovery plan should be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 CFR 44734-37), and take into account the Advisory Council on Historic Preservation's *Treatment of Archeological Properties*. At a minimum, the plan should:

- a. Describe the involved cultural properties including their significance and uses. The cultural properties should be evaluated in accordance with Manual 8110.4 and Utah Handbook H-8110.
- b. State the research questions that will be addressed consistent with the property's significance and uses. Broad questions of scientific concern should be considered as well as more focused questions posed in Class I Regional Overviews, historic context studies and other reports relevant to the area.
- c. Identify the specific data which need to be collected in order to address the research questions.
- d. Describe the field and laboratory analysis techniques to be used, and explain their relevance to the research questions.
- e. Provide for curation of collected materials.
- f. Outline the proposed contents of required reports and provide a schedule for their completion.

2. Field Techniques. A combination of data recovery techniques should be considered to ensure a well-balanced approach. Various methods to sample areas within a cultural property may be used to increase the effectiveness and efficiency of data recovery operations. Techniques that are selected should ensure investigation and documentation of those aspects of a cultural property which are relevant to the defined study topics.

Non-destructive methods include:

- ▶ Narrative descriptions
- ▶ Measured drawings and profiles
- ▶ Mapping (using surveying instruments, photogrammetry, etc.)
- ▶ Photographs (both standard and aerial)
- ▶ Magnetometer and other electronic surveying methods
- ▶ Interviews and archival research (for gathering data on traditional cultural properties and other properties).

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Destructive methods include:

- ▶ Surface artifact collections
- ▶ Subsurface excavations
- ▶ Collection of materials for dating or environmental analyses (Carbon-14, pollen, flotation, dendrochronology, etc.)

3. Data Recovery Report. Results of data recovery efforts are documented in a professionally prepared report meeting the standards set forth in Appendix 11. Reports must provide sufficient information for Bureau cultural resource specialists to complete the Section 106 compliance process. A report prepared by non-Bureau personnel must be reviewed for adequacy by the appropriate Bureau cultural resource specialist. Section 106 compliance is not considered complete until the final data recovery report is approved by the BLM and filed with the State Historic Preservation Officer.

4. Properties Discovered During a Land Use Activity. While identifying and evaluating cultural resources as described in Section II, above, Field Managers should consider the likelihood that additional properties will be discovered during implementation of an undertaking. If discovery is likely, a plan should be developed for the treatment of such properties before initiating or authorizing the undertaking.

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If a discovery plan has been developed, the Field Manager will follow the plan when cultural properties are discovered during an undertaking, taking prudent and feasible steps to ensure that the property is not damaged until treatment is completed.

If a discovery plan has not been developed before implementing an undertaking, the Field Manager will make reasonable efforts to avoid or minimize harm to the discovered property until (1) the property has been evaluated in terms of National Register eligibility and appropriate uses(s), and (2) treatment measures have been carried out consistent with any treatment plan developed for the undertaking as a whole. In the absence of a treatment plan for the undertaking, measures will be carried out consistent with the Specialist's professional assessment of the property's scientific, traditional, public, or conservation values.

5. Curation. Federally owned artifacts, samples, collections, and copies of records, data, photographs, reports and other documents resulting from data recovery operations are considered "museum property" and must be housed in a curatorial facility approved by the Utah State Director. Except in emergencies when unanticipated collection of artifacts is necessary to prevent their destruction or theft, a written agreement with an approved repository must be on file with the Utah State Office before cultural materials are collected from public lands. Curatorial facilities housing BLM collections must strive to meet the standards set forth in 36 CFR 79.9.

BLM Field Offices should not attempt to provide on site long-term curation except for (1) reference collections used by cultural resource specialists to assist in identifying and evaluating cultural resources, and (2) small interpretive collections used to educate or to illustrate Bureau procedures to the public.

B. Other Physical Protection Measures. In addition to data recovery, physical protection measures include signing, fencing/gating, patrol/surveillance, erosion control, fire control, stabilization, relocation, and adaptive reuse. Physical protection measures may be applied directly to the cultural property, as in stabilization, or indirectly to the general area, such as in signing, fencing or patrolling.

The need for protection may be identified through routine project-specific field inventory efforts, Class II surveys, or areal surveys and patrols designed specifically for that purpose. General cultural property condition should be recorded on site forms. Where recent looting or vandalism are noted, a Cultural Resource Condition and Vandalism Record, form UT-8120-1 (see Appendix 12), may be used to document damage.

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1. Signing. Under conditions of active or potential vandalism, cultural properties should be adequately signed, identifying the protection afforded by law. BLM's Archaeological Resources Protection Act sign #S-53 may be used for this purpose. Signs should be placed so as not to intrude upon the property or to draw unwanted attention to it. Interpretive signs may also be appropriate for some properties and may protect them by promoting conservation ethics.

2. Fencing/Gating. Fences, barriers and gates of various materials can be used alone or in combination to restrict access. Designs and materials should be selected to avoid unwarranted intrusion on the property. Maintenance and safety requirements must also be considered in the design. Boulder placements, post-and-cable barriers, and various types of wire fences have been used successfully in Utah.

3. Patrol/Surveillance. Patrol and surveillance are determined by and scheduled according to the nature of the resource, degree of threat present, and the uses appropriate for the cultural resources involved. Irregularly scheduled patrols are among the best means of deterring looting, vandalism and other unauthorized uses. Besides staking out a site, surveillance can be accomplished through detection systems; however, installation of surveillance equipment should not impair or compromise the integrity of the cultural resources. Field Offices should consider using Utah Site Steward Program volunteers and Civil Air Patrol volunteers to assist in reducing looting and vandalism.

4. Erosion Control. Cultural resources are frequently threatened by various types of erosion. Flooding, seepage, major runoff areas, movement of soils by wind action, and other potential erosion problems can be monitored and controlled. Erosion can generally be controlled off-site at lower cost, with less disturbance to the resource, than on-site. Recontouring to improve drainage, constructing catch basins, diversion or check dams, windbreaks, and other off-site protection measures can reduce erosion.

When erosion control is necessary within the boundaries of a cultural property, the effects of the control measures on resource values should be carefully limited. Standard engineering construction practices must be modified to allow the proper recovery and recording of information which would be disturbed by implementing the erosion control measures. Examples of on-site erosion control measures include recontouring the site surface to promote better drainage, and backfilling illegally excavated areas.

5. Fire Control. An active off-site fire protection program to protect cultural resources should include pre-suppression, suppression, and post-suppression activities. Periodic inspections may be undertaken to determine potential fire hazards. Pre-suppression measures include fire retardant treatments, reduction of fuel, construction of fuel breaks, and site-specific fire action plans. When implementing off-site fire control measures, care should be taken to preserve the cultural resources's visual and environmental setting. Post-suppression analysis should consider physical conservation measures needed to restore the setting and rehabilitate the cultural resource damaged by fire and suppression activities.

Effective on-site fire control is limited primarily to preventive measures. For example, wooden structures can be treated with fire retardant, trash and litter can be reduced, and in areas of public use, restrictions can be placed on campfires in the immediate vicinity of cultural properties. Fire arrest equipment can be provided inside structures for visitor safety and protection of the resource.

6. Stabilization. Structural and material stabilization techniques introduce chemical, mechanical, or structural elements to retard the deterioration of a variety of cultural resources. For example, chemical measures include applying polymers to protect rock art; structural measures include replacing mortar; mechanical measures include jacking floors. Detailed specifications for stabilization work should include individual fieldwork tasks required, specific locations requiring stabilization, methods and materials to be used, and types of expertise required. Maps, scale drawings and photos should be used liberally to illustrate work requirements. All stabilization work

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must be accurately and adequately documented to provide a clear “before and after” record of the property.

7. Relocation. Some cultural resources can be relocated with minimal impact to their inherent significance. This alternative is largely limited to structures and to some forms of rock art such as boulders containing petroglyphs. Relocation of structures is usually expensive and requires special skills and equipment. Efforts to relocate properties should be carefully planned after full consideration of alternative protection methods.

8. Adaptive Reuse of Structures. The adaptive reuse of historic structures should be considered before selecting more potentially destructive methods such as relocation. After rehabilitating a structure consistent with its historic character, it may be usable in its original location.

C. Administrative Protection Measures. Administrative protection measures include withdrawal, closure to public access and off-highway vehicles, special designations, land acquisitions, transfer, easements, and public information and education programs.

1. Withdrawal (43 CFR 2300-2370; BLM Manual Section 2321.6). Protective withdrawal of lands means withholding an area from settlement, sale, location or entry under the general land laws and mining laws. Withdrawals usually do not cover discretionary actions such as those taken under the mineral leasing laws or the Recreation and Public Purposes Act. Administrative withdrawal allows transfer of jurisdiction to other Federal agencies.

2. Closure to Public Access and Off-Highway Vehicles (43 CFR 8364 and 8340). Areas may be temporarily closed to public use and travel to facilitate special cultural uses, protect cultural resources from damage, or to protect scientific studies. Public lands may also be designated as open, limited or closed to the use of off-highway vehicles.

3. Special Designations (36 CFR 60 and 65; BLM Manual Section 1613). Individual cultural properties or districts may be nominated to and listed on the National Register of Historic Places to recognize and reinforce their special management status. Limited protection through national recognition is also afforded properties listed as National Historic Landmarks. Areas of Critical Environmental Concern may also be designated to address special management needs for cultural resources.

4. Land Acquisition (43 CFR 2200). State-owned or privately owned portions of Federal cultural properties or adjacent State or private lands may be acquired through exchange, purchase or deed to maintain site integrity or to provide buffer areas.

5. Recreation and Public Purposes Act (43 CFR 2740). The Act allows transfer of land to State or local government agencies or other entities (such as historical societies, conservation groups) under a conditional lease or patent. This tool can be used to allow other entities to protect and develop cultural properties for public use when it is impractical or infeasible for BLM to do so.

6. Easements (BLM Manual Section 2130). Easements are authorizations for non-possessory, non-exclusive use of lands. BLM may acquire an easement to ensure administrative access to a cultural property (such as for patrolling) or to install physical protection measures (such as fences or dikes) on non-Federal lands to protect BLM-administered cultural properties.

7. Public Information and Education (See BLM Manual Section 8130.3 and Handbook H-8130-1). Efforts to inform and educate the public about local cultural resource values and conservation ethics may help decrease vandalism and ensure compliance with use restrictions. Utah Archaeology Awareness Month and Project Archaeology are two of the most effective and widespread cultural resource awareness programs available for Field Office participation.

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IV. Consulting Native Americans

Within the framework of a government-to-government dialogue, and consistent with BLM Manual Section 8160 and Manual Handbook H-8160-1, the Field Office manager will determine how consultation with Native Americans should proceed when identifying, evaluating and treating cultural properties. Federally recognized Indian tribes have the status of dependent domestic nations and are entitled to be treated accordingly. This relationship, dating to the 1830's, is reiterated and clarified in the Executive Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

In most cases it is appropriate for the Field Office Manager to meet face-to-face with the elected representatives of a tribal government on operational matters, such as review of BLM plans and their potential effects on sacred sites. For some matters of notable significance to both the tribal government and the United States, the State Director or the Director might be the more appropriate representative of the United States Government.

The following consultation processes will serve as a general guide for meeting the Native American consultation requirements of the Federal Land Policy and Management Act (FLPMA), American Indian Religious Freedom Act (AIRFA), National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act (ARPA), and Executive Order 13007 ("Indian Sacred Sites").

A. Consultation During Land Use Planning. Native American consultation during preparation of regional land use plans/EIS's, regional plan amendments, and local land use plans is needed to meet the BLM's responsibilities under FLPMA, NEPA, AIRFA, NAGPRA, and Executive Order 13007. The BLM must inform tribal officials of opportunities to comment on and to participate in development of BLM land use plans, specifically requesting their views, asking them which individuals, such as traditional leaders or religious practitioners, should be contacted, if any, and making an effort to pursue those contacts. The Field Managers can meet BLM's consultation responsibilities during land use planning as follows:

1. Send a letter to the chief executive of each potentially interested tribe. The letter should inform the tribe of any public meetings that will be held to provide an opportunity for the tribe to raise issues and express concerns that the tribe feels should be addressed in the plan. The letter should at a minimum provide a description (and map) of the planning effort, invite the tribe to participate in scoping, offer to meet separately with the tribe, and request the tribe's comments on:

- a. any issues or concerns the tribe might have regarding BLM's management of the planning area,
- b. whether there are any places of traditional religious or cultural importance to the tribe within the planning area, or needs for access to these places, that should be considered in BLM's planning effort,
- c. whether there are any individuals, such as traditional cultural leaders or religious practitioners, who should also be contacted. If the Field Office is already aware of such individuals, the letter should state that the BLM will be contacting them as well.

2. Review what is already known about the interests of the tribe pertaining to the area affected by the plan, including ethnographic data and other information provided by the tribe.

3. Send a copy of the draft land use plan to the tribe for review and comment. The tribe should be afforded at least 60 days to provide their comments.

4. Consider comments provided by the Native Americans consulted in making decisions on the

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plan, and provide consulted persons with a copy of the final plan decisions.

5. Carefully document all consultation efforts.

► Standard of Sufficiency. After sending the letter described above, the Field Manager should extend an invitation to the chief governing authority of each tribe potentially concerned about or affected by a plan, seeking the tribe's participation and comments. This should minimally involve contact by a telephone call. If the tribe chooses not to participate or provide comments, the Field Manager's efforts will be considered sufficient. If tribal officials request it, the Field Manager should meet with them or other tribal members in person. If the Field Office already knows of individuals, such as traditional leaders or religious practitioners, who might wish to know about BLM planning issues, the Field Manager should inform tribal officials that the BLM anticipates contacting the individuals directly before actually doing so. These few steps are the minimum level of effort sufficient to meet Native American consultation requirements on land use plans.

B. Consultation on Land Use Actions. When considering a specific land use action, efforts to meet the consultation requirements of NHPA, NAGPRA, ARPA, AIRFA and NEPA should be coordinated as much as possible and may be met through a single consultation process. The Field Manager can meet the BLM's consultation responsibilities when considering land use actions as follows:

1. Review what is known from previous consultations about Native Americans' concerns pertaining to the area affected by the proposed action, including review of any agreements with Indian tribes about when they should be consulted concerning particular areas or particular kinds of undertaking. Also review relevant ethnographic data and other information provided by the tribe.

2. As appropriate, based on information reviewed in 1. above, consult with the chief governing authority of any tribe potentially concerned by the proposed action. This should be done at the earliest opportunity after receiving a land use application or at the earliest stages of project planning and should provide as much information as possible regarding the location and nature of the proposal, including the Environmental Assessment and the results of any cultural resource inventories already completed. As a first step in this consultation, the Field Manager should send a letter to each tribe inviting the tribe's comments on the proposed action, including:

a. concerns the tribe might have with the proposed action in general, and how to resolve any issues that might affect the tribe,

b. how to resolve adverse effects on cultural properties identified in the cultural resource inventory,

c. whether there are places of traditional religious or cultural importance that were not identified in the cultural resource inventory, and if so, how to resolve adverse effects on them,

d. how to treat human remains and "cultural items" as defined in NAGPRA (if excavation of these remains and items is anticipated), and

e. whether there are any traditional cultural leaders or religious practitioners who should also be contacted. If the Field Office is aware of such leaders or practitioners, or if the tribe has cultural resource representatives who are designated to act as liaisons with Federal agencies, the letter should state that the BLM will be contacting those individuals, as well.

3. Complete a cultural resource inventory of the area affected by the proposed action, if needed. For relatively small actions, the inventory may be conducted prior to initiating consultation with the tribe. Results of the inventory should be shared with the tribe if requested.

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4. For large or complex actions, consult with tribes during the project planning stage, before conducting a cultural resource field inventory. This is particularly important when the project area is likely to change as a result of tribal concerns or public comment. In such cases, the Field Manager should consult again with the tribe after the field survey is completed, to discuss the cultural resources located by the survey. The Field Manager and the tribe may wish to establish mutually agreed criteria for when it is appropriate not to consult, such as for minor or routine land use actions or for actions in certain locations.

5. Consider comments gathered as a result of these efforts in making decisions on the proposed action, in developing treatment plans for cultural properties, and in complying with Section 106 of the NHPA in accordance with the Utah Protocol. Tribes should be given at least 30 days to comment after receiving a draft Environmental Assessment or other documentation about a proposed action. Persons consulted should be notified of BLM's final decision.

6. Document consultation efforts carefully.

► Standard of Sufficiency. The required level of effort is the same for consulting on proposed land use actions as for consulting on land use plans. However, while all land use plans will require consultation with Indian tribes, some proposed land use actions may not. Consultation is necessary whenever the Field Manager determines, in conformance with any existing agreed-upon arrangements with the tribe, that the nature and/or the location of a proposed land use could affect Native American interests or concerns.

C. Notifying and Consulting Tribes for Inadvertent Discoveries under NAGPRA. The Native American Graves Protection and Repatriation Act (NAGPRA) requires that any person who inadvertently discovers Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony (defined in 43 CFR 10.2(d)) on Federal lands must notify the responsible Federal official.

● Within three days after receiving written confirmation of an inadvertent discovery, the responsible Field Manager must take the following steps:

1. Certify, in writing, that he/she received written confirmation that items covered by NAGPRA were discovered. This certification can be a brief memorandum to the file.

2. Take immediate steps to secure the site and protect the discovered items.

3. Notify by telephone, and send written confirmation, to the following:

a. Known lineal descendants (it would be highly unlikely that lineal descent could be traced unless the discovery is from the recent historic period),

b. Tribes "likely to be culturally affiliated" with the items discovered,

c. Tribes which aboriginally occupied the area (based on a final decision of the Indian Claims Commission or U.S. Court of Claims), and

d. Other tribes which have a "demonstrated cultural relationship" or are "reasonably known to have a cultural relationship" to the items discovered.

4. Initiate consultation.

● The written notice in #3, above, should:

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1. Make it clear that the notice is being sent as required by Sec. 3 of NAGPRA and its implementing regulations 43 CFR 10.4 and 10.5.
 2. Describe the kinds of human remains and funerary objects that were discovered and their condition as well as BLM can determine. (Note: The regulations also require notices to describe sacred objects and objects of cultural patrimony but discovering and recognizing such objects in archaeological contexts would be extremely unlikely).
 3. Describe the circumstances of their discovery.
 4. Propose a time and place for meetings or consultation to further consider the inadvertent discovery. Consultation will include proposals for treatment and disposition of any remains and objects that may be excavated. (Note: BLM is required to determine affiliation and transfer custody only if the discovery must be excavated or removed. If the discovery will remain in place, it will stay under federal ownership and control).
 5. List all tribes that have been, or are being, consulted about the inadvertent discovery.
 6. State that any additional documentation used to identify affiliation will be supplied upon request.
- During consultation, the Field Manager must ask the following:
 1. The names and addresses of traditional religious leaders who should also be consulted.
 2. Recommendations on conducting the consultation process.

Neither the law nor the regulations specify a set period of time for completing or terminating consultation. The 30-day stop-work period only relates to the conduct of activities in the area of discovery. It does not mean that consultation must be completed within this period of time, or that BLM has no obligation to consult once this period has elapsed.

D. Recovery Plans for Inadvertent Discoveries under NAGPRA. Recovery Plans [see 43 CFR 10.4(d)(2)], are optional. They specify the procedures and guidelines to be used when it is necessary to excavate or remove Native American human remains, funerary objects, sacred objects or objects of cultural patrimony inadvertently discovered on Federal lands. Recovery Plans document the affiliated tribe(s) concurrence with the proposed excavation or removal and allow activities in the area of discovery to proceed, including data recovery or other treatment, prior to the expiration of the 30-day waiting period required by NAGPRA. Recovery Plans must be signed by the affiliated Indian tribe(s). If the Field Office believes it will not likely be able to prepare a Recovery Plan and obtain the affiliated tribe's signature on it within the 30-day waiting period, the Field Office should skip this option and move directly to preparing a Plan of Action (see F, below). A Plan of Action must be prepared for excavation or removal of an inadvertent discovery even if a Recovery Plan has been prepared and signed.

E. Notifying and Consulting Tribes before Intentionally Excavating or Removing Items Covered under NAGPRA. NAGPRA requires BLM to notify and consult with Indian tribes before authorizing the excavation or removal of Native American human remains, funerary objects, sacred objects or objects of cultural patrimony from Federal lands. NAGPRA also requires that any such intentional excavation or removal be in compliance with the permitting provisions in Section 4 of the Archaeological Resources Protection Act (ARPA). ARPA requires BLM to notify and consult with Indian tribes who ascribe religious or cultural importance to a site before any archaeological resources are excavated or removed. Utah tribes have made it clear that human burial sites are of cultural importance to them, so the notification requirements of both NAGPRA and ARPA must be met

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prior to excavating or removing Native American burials.

- Before the BLM undertakes or authorizes the excavation or removal of items covered under NAGPRA, the Field Manager must send written notice to the following [see 43 CFR 10.3(c)(1) and 10.5(b)]:

1. Known lineal descendants (it would be highly unlikely for lineal descendants to be known unless the human remains were from the recent historic period),

2. Tribes “likely to be culturally affiliated” with the items to be excavated,

3. Tribes which aboriginally occupied the area (based on a final decision of the Indian Claims Commission or U.S. Court of Claims), and

4. Tribes which, in BLM’s opinion, have a “demonstrated cultural relationship” or are “likely to have a cultural relationship” to the items that are expected to be found.

- The written notice should:

1. Make it clear that the notice is being sent as required by Sec. 3 of NAGPRA and its implementing regulations 43 CFR 10.3 and 10.5; and by Sec. 4(c) of ARPA and its implementing regulations 43 CFR 7.7.

2. Describe the planned activity, including its general location.

3. Describe the basis upon which BLM determined that human remains or funerary objects may be excavated. The regulations also require this for the excavation of sacred objects and objects of cultural patrimony but it is extremely unlikely that such objects would occur in an archaeological context or that BLM would have any basis for believing they may be excavated.

4. Describe the basis for determining likely custody.

5. Contain a disclaimer stating that no final determinations of cultural affiliation can be made until the remains are excavated and examined.

6. Propose a time and place for meetings or consultation to further consider the intentional excavation, including BLM’s proposed treatment and disposition of any remains and objects that may be excavated.

7. List all tribes that have been, or are being, consulted about the intentional excavation.

8. State that any additional documentation used to identify affiliation will be supplied upon request.

The written notice should be followed with a telephone call if no response is received in 15 days.

- During consultation, the Field Manager must ask the following:

1. The names and addresses of traditional religious leaders who should also be consulted.

2. Recommendations on conducting the consultation process.

Neither the law nor the regulations specify a set time period for completing or terminating consultation.

F. Plans of Action for Excavation or Removal of Items Covered under NAGPRA. A Plan of Action

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must be completed prior to excavating or removing Native American human remains and other NAGPRA items. This is true regardless of whether the remains or items were inadvertently discovered or were already known and selected for intentional excavation. The Field Manager must prepare and sign the Plan of Action following consultation with the tribes described in C and E, above. The tribes involved must be given a copy of the Plan and should be afforded an opportunity to sign it. Obtaining the signatures of tribal officials is, however, not mandatory. All Plans of Action must address the nine topics listed in 43 CFR 10.5(e).

G. Newspaper Notice for Transferring Custody of Items Covered under NAGPRA. A newspaper notice must be published before transferring custody of NAGPRA materials which are excavated and removed from public lands after November 1, 1990. The purpose of the newspaper notice is to give potentially interested lineal descendants and tribes enough information to determine their interest in claiming custody of the materials and to ensure that all potential claimants receive due process before their rights are precluded by transfer of custody. The notice will be prepared by the State Director and will be sent to the BLM National Curator for approval. When finalized, the notice will be published in a newspaper of general circulation in the area where the materials were found and, if applicable, in a newspaper in the area in which the affiliated tribe resides. The notice must be published two times at least one week apart, and transfer of custody cannot occur until 30 days after publication of the second notice. If additional claimants come forward, transfer of custody must be delayed until all claims have been resolved. The State Director will send a copy of the notice, showing when and where it was published, to the National Curator for transmittal to the Departmental Consulting Archaeologist.

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Utah BLM-SHPO PROTOCOL

**STATE PROTOCOL AGREEMENT BETWEEN
THE UTAH STATE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT
AND THE UTAH STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING THE MANNER IN WHICH THE BUREAU OF LAND MANAGEMENT
(BLM) WILL MEET ITS RESPONSIBILITIES UNDER THE NATIONAL HISTORIC
PRESERVATION ACT (NHPA) AND THE NATIONAL PROGRAMMATIC
AGREEMENT (PA) AMONG THE BLM, THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION (COUNCIL), AND THE NATIONAL CONFERENCE OF STATE
HISTORIC PRESERVATION OFFICERS (NCSHPO)**

This Protocol Agreement (Protocol) supplements the above-referenced national PA, and pertains to Sections 106, 110, 111 (a) and 112 (a) of the NHPA. It describes specific procedures regarding how the Utah SHPO and the BLM will interact and cooperate under the national PA. The goals of this Protocol and the national PA are to enhance planning for and management of historic properties under the BLM's jurisdiction or control and to ensure appropriate consideration of historic properties outside BLM's jurisdiction, but which may be affected by its actions. Undertakings involving non-federal lands for which BLM is considered the lead agent shall be considered federal actions and will be subject to requirements outlined in this Protocol. This agreement does not apply to tribal lands as defined in NHPA. The following are the agreed-upon procedures of the Protocol.

I. RELATIONSHIP OF THIS PROTOCOL AGREEMENT TO OTHER AGREEMENTS

All general compliance agreements not including on-going project specific programmatic agreements or MOAs, are terminated. Any BLM manager in Utah who elects not to follow the process set forth in this Protocol will comply with 36 CFR 800 procedures regarding individual undertakings until his or her difficulties with applying the Protocol are resolved following procedures detailed in Section IX (A), after which use of this Protocol will resume.

SHPO and BLM agree that (1) BLM conducts continuing programs and carries out specific undertakings that involve land disturbance and modification of the built and natural environments, and; (2) BLM bears legal responsibility for carrying out such undertakings consistent with the National Historic Preservation Act (NHPA), and that; (3) BLM's undertakings, including actions assisted, licensed, permitted, approved, funded, or authorized by BLM, being "undertakings" as defined in the Code of Federal Regulations [36 CFR 800.16(y)], are numerous, complex and far-reaching in their effects on lands and properties in Utah.

The following procedures will be implemented by the BLM under this Protocol to fulfill its responsibilities under the above-mentioned authorities.

II. ADMINISTRATIVE INTERACTION AND REPORTING PROCEDURES

BLM will send project logs (Attachment A) to the SHPO at the time BLM prepares its annual

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report to the Secretary of the Interior, usually in November or December. BLM will also prepare a summary report (Attachment B) that describes the implemented actions taken in the previous fiscal year and actions that are anticipated in the coming fiscal year. This report will be due to the SHPO by October 30th of each year, and will include information as outlined in Attachment B. By November 30th of each year, the SHPO will prepare a report that assesses the overall effectiveness of BLM's implementation of this Protocol and makes recommendations for actions to be taken by BLM. The BLM will consider SHPO's assessments and recommendations for future actions and will apply them to the plan for the following fiscal year, as appropriate. If SHPO is not satisfied with BLM's response, procedures Section IX (A), below may be followed.

The SHPO, a BLM line manager, BLM's Deputy Preservation Officer for Utah, and the BLM Utah Cultural Resources Specialists will meet annually in November, or more often as needed, to discuss pertinent issues. The Council will be invited to participate. At the Annual meeting, the SHPO and BLM will exchange information relevant to the goals and objectives set forth in this Protocol. Other meetings to address emerging issues and their effects on historic properties may be arranged as necessary.

III. BLM AND SHPO INVOLVEMENT IN THE BLM STATE MANAGEMENT PROCESSES

BLM shall provide the SHPO the opportunity to participate at the development stage and all subsequent phases of land use planning in accordance with 43 CFR 1610.3 (Coordination with Other Federal Agencies, State and Local Governments, and Indian Tribes). BLM will provide the SHPO with all land management plans (e.g., Resource Management Plans, Cultural Resource Management Plans), special use plans (e.g., Fire Management Plans) and appropriate NEPA documents. Such plans will document methods to gain public input.

IV. COOPERATIVE PROGRAM DEVELOPMENT AND ACTIVITIES

A. Data Sharing and Information Management

1. Reporting. BLM will document all Undertakings. BLM will submit to the SHPO copies of all fieldwork reports for historic property inventories and Intermountain Antiquities Computer Site Forms (IMACS) as soon as possible after completion of the work, but not later than three months following completion of the fieldwork. If a final report will not arrive at the SHPO's office within the three month deadline, the BLM will notify the SHPO in writing, and will include in the correspondence a plan for completion and the expected date of submission.

BLM will review the work of permitted contractors and will ensure that Utah State Report Guidelines and the Secretary of the Interior's Standards and Guidelines (Secretary's Standards) are met in all documentation prepared by contractors and by all BLM staff.

All "backlog" documentation that exists in BLM files and which predates the signing of this Protocol will be submitted to the SHPO within twelve months of the implementation of this Protocol. Elimination of the backlog documentation is a condition of continuing field office certification. If the documentation will not arrive at the SHPO's office before the deadline, BLM will notify SHPO in writing, and will include in the correspondence a plan for completion and the

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expected date of submission.

2. Data exchange. The SHPO and BLM shall exchange information on a constant basis regarding the location and evaluation of cultural resources. Each agency will assure that such locational information is protected from unauthorized use. As appropriate, information exchange will be through the development of an automated database, managed by the SHPO. BLM will assist the SHPO in developing the system by providing financial, personnel, hardware and software resources, as funding becomes available (Memorandum of Understanding, February of 1996).

The SHPO will provide the BLM with automated cultural resources information and with reasonable amounts of hard copy information not yet available in the database, as requested by the BLM. Charges may be assessed and are subject to negotiation at the annual November meeting.

3. Maintenance of files. BLM and SHPO will support and maintain a fully compatible and up-to-date database. The BLM and SHPO will incorporate the results of project-specific surveys into the database as the results are produced. The review and analysis will be performed by BLM and SHPO annually, in time for the yearly meeting.

B. State-Level Historic Preservation Training

The SHPO will be offered the opportunity to assist the BLM in on-going training of field managers and supervisors, as well as of cultural resources staff, for certification purposes. Training resources might include, but are not limited to: Section 106 and Section 110 Training, planning documents, NAGPRA, and other training as necessary.

C. Public Outreach and Participation

BLM will develop and implement plans in support of public education and community outreach, along with cooperative stewardship and site protection, in consultation with SHPO. BLM will continue with its Project Archaeology Program and other Heritage Education efforts.

BLM will seek and consider the views of the public and Indian Tribes when carrying out the actions under the terms of this Protocol. BLM may coordinate this public participation requirement with those of the NEPA and the Federal Land Policy and Management Act of 1976 (FLPMA), along with other pertinent statutes. Interested parties shall be invited to consult in the review process [Section VII (B) below] if they have interests in a BLM undertaking or action on historic properties. Such interested parties may include, but are not limited to, local governments, especially those with historic preservation ordinances or resolutions (Attachment D); grantees, permittees, or owners of affected lands or land surfaces; and other interested parties, as determined by the BLM and SHPO.

V. NATIVE AMERICAN PARTICIPATION

BLM will comply with the NHPA, and the Native American Graves Protection Act (NAGPRA) and

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other applicable statutes if a property is subject to those laws. BLM will seek and consider the views of Indian tribes in accordance with the requirements of these and other statutes, regulations and policy directives including Executive Orders, Manuals, and memoranda.

VI. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. Identification

BLM will make reasonable efforts to identify all historic properties and sacred sites on BLM-administered lands and private lands where a BLM undertaking will occur within Utah. BLM will ensure that project-specific surveys and other efforts to identify historic properties are conducted in accordance with appropriate professional standards, as defined in the Secretary's Standards, and the BLM's 8100 Manual.

B. Evaluation

During all inventories, BLM will ensure that historic properties identified are evaluated in a manner consistent with the Secretary's Standards, 36 CFR Part 60.4 and BLM's 8100 Manuals.

VII. SHPO Review Parameters

BLM shall complete inventory, evaluation and assessment of effects and the written documentation of these findings before proceeding with project implementation. Most of BLM's undertakings are routine in nature, and will normally be permitted to proceed and will not await submission of formal documentation to SHPO. For other undertakings, as described in Section V11 (A), below, BLM will consult with SHPO prior to implementation of the action. BLM will discuss the issue with SHPO in cases where there is any uncertainty.

A. Review Thresholds

A. At a minimum, the BLM will request the review of the SHPO along with the Council (as determined by the national PA) in the following situations:

(1) non-routine interstate and/or interagency projects or programs;

(2) undertakings that directly and adversely affect National Historic Landmarks or National Register eligible properties of national significance.

(3) highly controversial undertakings, when Council review is requested by the BLM, SHPO, an Indian Tribe, a local government, or an applicant for a BLM authorization.

B. The BLM will request the review of SHPO in the following situations:

(1) undertakings affecting National Register eligible or listed properties.

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(2) land exchanges, land sales, Recreation and Public Purpose leases, and transfers.

(3) when BLM professional staff lack the appropriate regional experience or professional expertise, and until performance is mutually acceptable to the BLM Deputy Preservation Officer and SHPO.

(4) when BLM's professional cultural resources staff wishes to bring a particular project to the attention of SHPO.

C. At a minimum, the BLM will not request the review of the SHPO in the following situations (except for the four circumstances at (B) above):

(1) No Potential to Effect determinations by qualified BLM staff.

(2) No Historic Properties Affected; no sites present, determined by qualified BLM staff.

(3) No Historic Properties Affected; no eligible sites present, determined by qualified BLM staff.

(4) No Historic Properties Affected; eligible sites present, but not affected as defined by 36CFR800.4.

When the above review thresholds are met, the following process will be undertaken.

B. Review Process

BLM will make determinations of eligibility according to 36 CFR Part 60.4 and effects according to criteria set forth in 36 CFR 800.5. BLM will confer with SHPO whenever questions about eligibility and/or effect arise. As appropriate, BLM shall invite interested parties to consult.

BLM will provide documentation in the form of complete and accurate IMACS site forms and inventory reports, as appropriate, to the SHPO, on all projects and undertakings. An informational letter (Attachment D, informational) will accompany this documentation. The SHPO may comment, in writing, on BLM's findings. The BLM will respond, in writing, to any SHPO comments. Both parties will include such comments and responses in the annual report that assesses effectiveness of the Protocol under Section 11.

Inventory will be documented following the Secretary's Standards, BLM procedures and 8100 Manual. Prompt transmission of this documentation will assure an updated database and will occur no later than three months after completion of fieldwork as described in Part IV (A) (1) above.

If a historic property will be affected, BLM will determine whether an MOA or a Treatment Plan is appropriate, in consultation with SHPO, and will document this in the concurrence letter (Attachment D, concurrence). When an adverse effect cannot be avoided through project redesign, BLM will prepare and implement an MOA or Treatment Plan for each property, group of properties, or class of properties that have been determined eligible for inclusion in the NRHP.

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The Treatment Plan or MOA will take into account the national policies set forth in Section 2 of the NHPA, as amended, and current professional standards. BLM and SHPO will jointly prepare MOAs. BLM will afford the SHPO 15 working days in which to comment upon Treatment Plans. If the SHPO and the BLM cannot reach agreement, dispute resolution procedures will be followed [Part IX (A)].

C. BLM Review

Within six months after signing of this Protocol, BLM and SHPO will meet to review the implementation of this Protocol.

BLM's Deputy Preservation Officer will conduct reviews of each field office (Attachment E), at least annually, in sufficient detail, to determine:

- (1) whether a qualified professional cultural resources staff is present;
- (2) whether undertakings are receiving appropriate cultural resource consideration;
- (3) whether project documentation is being completed and sent to SHPO in a timely manner;
- (4) whether cultural resource identification, evaluation and treatment has occurred before undertakings proceed;
- (5) whether final reports of treatment are being completed and sent to the SHPO; (7) whether follow-up monitoring, where required by avoidance stipulations, MOA or treatment plan specifications, is being completed.

D. Monitoring

The SHPO may monitor projects through field visits and inspection of records. The BLM will cooperate with the SHPO's monitoring activities.

E. Discoveries

In the event that potentially eligible historic properties are discovered during the course of ground disturbance and cannot be avoided, work in the immediate vicinity of the discovery will cease. BLM will evaluate the site and, in consultation with the SHPO, select the appropriate mitigation option. The BLM will implement the mitigation in a timely manner. The process will be fully documented (in reports, site forms and photographs), and the documentation will be forwarded to the SHPO. Large-scale projects will include a discovery process in the treatment plan. If any discovery involves NAGPRA materials, BLM will follow specific requirements of NAGPRA (43 CFR 10).

VIII. STAFFING

A. BLM will strive to hire professional staff that meet manual requirements. Field offices will employ at least one full-time, permanent professional, or will make arrangements to have their workload covered by a qualified professional from another office, or will work with Utah State Office and the SHPO to agree on temporary measures to cover the professional staffing needs of that office.

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B. State Certification

BLM-Utah will ensure that expertise in prehistoric archaeology, historic archaeology, industrial archaeology, history, architectural history, historic architecture, Native American coordination, public outreach/heritage education and Traditional Cultural Properties (identification, evaluation and treatment) is available to all BLM-Utah staff (Attachment F). If BLM determines that it does not employ a staff member with a particular skill, it will obtain that expertise for the purpose of determining National Register eligibility, effects, and treatment for the cultural resources in question. The BLM may request the assistance of SHPO staff in such cases or may obtain the necessary expertise through contracts, BLM personnel from other states, or cooperative arrangements with other agencies.

When personnel changes occur, e.g., staff specialists or managers leave, field office certification will be reviewed. Until positions are filled and training is completed, BLM will ensure that qualified personnel are available to conduct the tasks outlined in this Protocol. If decertification is a possibility, the procedures in Section 8 of the national PA will be followed. Certification training topics will include, at a minimum, the national PA, the Protocol, and a review of the Handbook.

IX. DISPUTE RESOLUTION PROCEDURES, AMENDMENTS, AND TERMINATION

A. Dispute Resolution Procedures

Should the BLM or the SHPO object, in writing, within 30 days, to an action taken by the other party to this Protocol, they will consult to resolve the objection. If the dispute cannot be resolved, BLM and SHPO will mutually determine a course of action. Options might include consultation with the National Preservation Board, the Council or alternative dispute resolution procedures. If alternative arrangements are not mutually agreeable, the dispute will be referred to the Council.

B. Amendments to the Protocol

The BLM or the SHPO may request amendment of this Protocol at any time, whereupon the parties will consult to consider such amendment. Amendments will become effective upon signature of both parties and will be attached hereto.

C. Termination of the Protocol

The BLM or the SHPO may terminate this Protocol by providing thirty (30) days written notice to the other party, providing that the parties consult during this period to seek agreement on amendments or other actions that would avoid termination. Either may request the assistance of State Director, the Preservation Board, and/or the Council. In the event of termination, the BLM will operate under the provisions of 36 CFR Part 800 as described in Section 1.

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X. OTHER STATE-SPECIFIC PROCEDURES

BLM will follow procedures and adhere to policies detailed in BLM Utah Manual Guidance: the Procedures (Attachment C) and other supplemental manual guidance, along with IMACS site forms. BLM and SHPO will jointly develop and revise handbooks and other guidance as necessary.

XI. ATTACHMENTS

Attachments may be added to this Protocol with the mutual approval of the SHPO and the BLM. Referenced attachments are:

- A. Example Project Log Page
- B. Outline of Topics Covered in Colorado BLM/SHPO Annual Report
- C. Procedures for Professionals
- D. Cover Letters

 _____  _____
By Date
Bureau of Land Management State Director

 _____  _____  _____
By Date
Utah State Historic Preservation Officer

- E. BLM Review Form
- F. Professional Certification Information

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ATTACHMENT A: EXAMPLE ANNUAL PROJECT LOG PAGE

(NOTE: THE INFORMATION BELOW IS FICTITIOUS AND ONLY FOR EXAMPLE PURPOSES)

Resource Area: Moab Field Office
 Dates: From October 2001 through October 2002

NUMBER	WORK DONE BY	PROJECT NAME/REPORT TITLE	LEGAL DESCRIPTION/ QUAD	BLM ACRES	NON- BLM ACRES	SITES			SITES AVOI- DED	SITES MITI- GATED	SHPO CORRESPONDENCE		
						NR	NE	E			INFORMA- TIONAL (DATE SENT)	CONCURRENCE	
												DATE SENT	RESPONSE RECEIVED
01-UT-BL-001-b	BLM	First Trail ROW	T11S R77W S. 4, 9	3.67	0								
01-UT-BL-002-b	Jones	AT&T Communications Buried Cable	T11SR70W S. 17	2.8	5.9		5FN111- 115	5FN116	1	0			
01-UT-BL-003-b	Schmidt	MW Operating Company Well and Access	T1N R72W S. 24		8.34								

NR = National Register; NE = Not Eligible; E = Eligible

ATTACHMENT B: OUTLINE OF TOPICS TO BE COVERED IN THE UTAH BLM/SHPO ANNUALREPORT

- **BLM-implemented actions taken in the previous fiscal year and actions that are anticipated in the coming fiscal year**
- **Review of the goals and objectives set forth in this Protocol**
- **Emerging issues and their effects on historic properties**
- **Results of BLM and SHPO reviews of field office needs, including training and support**
- **Progress on public participation and outreach plans**
- **Results of field office reviews and SHPO monitoring**
- **Statistics BLM sends to Congress (mutually agreed upon by BLM and SHPO)**
- **SHPO comments and BLM responses**
- **NEPA logs by field office**

ATTACHMENT C: DRAFT HANDBOOKS 8110 AND 8120

A

*** FIELD OFFICE**
ADDRESS

IN REPLY REFER TO:
8100
(UT-)

DATE

State Historic Preservation Officer
Utah State Historical Society
300 Rio Grande
Salt Lake City, Utah 84101-1182

PART I. Project Description

County:
Project Number:

The following undertaking is located in T* R*, Section * in * County. Project Name: *. This undertaking involves *. Because this undertaking does not exceed any of the review thresholds listed in Part V11 (A) of the Protocol, this letter is for informational purposes only.

PART 11. Determination of Eligibility to the National Register of Historic Places.

BLM has made the following determinations of eligibility and effect:

DETERMINATION OF ELIGIBILITY					DETERMINATION OF EFFECT ON HISTORIC PROPERTIES
SITE NUMBER	NOT ELIGIBLE	NEED DATA	ELIGIBLE	ELIGIBILITY CRITERIA	NO HISTORIC PROPERTIES AFFECTED

A narrative discussing not eligible, need data, and eligible cultural resources is attached.

BUREAU OF LAND MANAGEMENT, * FIELD OFFICE

BY FIELD OFFICE ARCHAEOLOGIST

DATE

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A narrative discussing not eligible, need data, and eligible cultural resources , along with a draft treatment plan/ MOA is attached.

Please review the enclosed documentation, then sign and return this letter with your comments within ten working days.

BUREAU OF LAND MANAGEMENT, * FIELD OFFICE

BY FIELD OFFICE ARCHAEOLOGIST	DATE
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BY FIELD OFFICE MANAGER	DATE
-------------------------	------

UTAH STATE HISTORIC PRESERVATION OFFICER

Concur	Do Not Concur
--------	---------------

BY	DATE
----	------

COMMENTS:

2. Cultural Resources Inventory Report
3. Draft Treatment Plan or MOA

ATTACHMENT E: BLM REVIEW FORM

BUREAU OF LAND MANAGEMENT
CULTURAL RESOURCES PROGRAM CERTIFICATION BLM REVIEW FORM

FIELD OFFICE:

AUDITOR(S):

DATE:

FISCAL YEAR:

* Field Office

BLM Deputy Historic Preservation Officer

CRITERION	YES / NO	COMMENTS
Is a qualified professional cultural resources staff present?		
Are undertakings receiving cultural resource consideration?		
Is project documentation completed and being sent to SHPO in a timely manner?		
Are cultural resources staff making accurate professional judgements?		
Have cultural resource identification, evaluation and treatment occurred before undertakings proceed?		
Are final reports of treatment being completed and sent to the SHPO?		
Is follow-up monitoring, where necessary, being completed and documented?		

Attach documentation as necessary. Attachments might include cultural resource log pages, NEPA registers, SHPO concurrence documents, and monitoring reports.

ATTACHMENT F: BLM PROFESSIONAL CERTIFICATION INFORMATION

I. PROFESSIONAL HERITAGE RESOURCES STAFF

Utah State Office

Garth Portillo

Jeanne Moe
Julie Howard

Salt Lake Field Office

Laird Naylor

Lori Hunsaker
Peter Ainsworth

Monticello Field Office

Dale Davidson

Nancy Shearin

Kathy Huppe

Grand Staircase Escalante National Monument/ Kanab Field Office

Doug McFadden
Mathew Zweifel

Vernal Field Office

Blaine Phillips

Price Field Office

Blaine Miller

Fillmore Field Office

Erik Kreusch

Richfield Field Office

Craig Harmon

Cedar City Field Office

Gardiner Dalley

St. George Field Office

Gardiner Dalley

Geralyn McEwen

Moab Field Office

Bruce Louthan

Bill Wyatt

II. Professional Capabilities

The table on the following page details the areas of expertise that are relevant to managing cultural resources in Utah. Since some offices possess proficiency in areas that are lacking in others, skills will

be shared among them.

If no specialists currently on staff possess a particular skill, it will be obtained from an outside source. Such sources might include, but are not limited to, the Utah State Historic Preservation Office, the National Park Service, and private contractors.

III. Training and Professional Development

One of BLM-Utah's visions is to maximize the skills available in each location. To this end, cultural resource specialists will be provided with travel funds and tuition to attend professional training courses covering disciplines where they and their managers have identified deficiencies. In addition, specialists will be strongly encouraged to attend professional conferences, with funds for travel and meeting registration set aside yearly in the annual work plan. Sources for training include: federal programs, university courses and private sector training.

GUIDELINES FOR PROTECTING CULTURAL RESOURCE
Bureau of Land Management, Utah
Handbook H-8120

BLM CERTIFIED OFFICES

AREA OF EXPERTISE	FIELD OFFICES										
	CEDAR CITY	GSENM	FILL-MORE	KANAB	MOAB	MONTI-CELLO	PRICE	RICH-FIELD	SALT LAKE	ST. GEORGE	VERNAL
ARCHAEOLOGY: PREHISTORIC	X	X	X	X	X	X	X	X	X	X	X
ARCHAEOLOGY: HISTORIC	X	X	X	X	X	X	X	X	X	X	X
ARCHAEOLOGY: INDUSTRIAL	2	2	2	2	2	2	2	2	2	2	2
HISTORY	X	X	X	X	X	X	X	X	X	X	X
HISTORIC ARCHITECTURE/ ARCHITECTURAL HISTORY	2	2	2	2	2	2	2	2	2	2	2
NATIVE AMERICAN COORDINATION/ TRADITIONAL CULTURAL PROPERTIES	X	X	X	X	X	X	X	X	X	X	X
PUBLIC OUTREACH/ HERITAGE EDUCATION	X/4	X/4	X/4	X/4	X/4	X/4	X/4	X/4	X/3	X/4	X/4
COLLECTIONS MANAGEMENT	3	3	3	3	3	3	3	3	3	3	3

KEY:

X = Field Office possesses in-house expertise

GUIDELINES FOR PROTECTING CULTURAL RESOURCE
Bureau of Land Management, Utah
Handbook H-8120

- 1 = Field Office will seek assistance from another Field Office within BLM
- 2 = Field Office will seek assistance from the Utah Historical Society
- 3 = Field Office will seek technical assistance from the Utah State Office
- 4= These offices have trained facilitators for "Intrigue of the Past"

Guidelines for Protecting Cultural Resources Specific to Oil and Gas Activities

I. Introduction

In accordance with the National Historic Preservation Act of 1966, the Antiquities Act of 1906, and the Archaeological Resources Protection Act of 1979, the Federal Surface Management Agency (SMA) must assure that operations on oil and gas leases under its jurisdiction are conducted with due regard for survey, evaluation, and mitigation of disturbances to cultural resources. All operations which are conducted on onshore Federal and Indian oil and gas leases must conform to the requirements of any notices to lessees (NTLS) applicable to Utah (except where local Indian requirements apply) as well as those contained in the Oil and Gas Operating Regulations, 43 CFR 3160; Onshore Oil and Gas Order No. 1; National Register of Historic Places, 36 CFR 60; Determinations of Eligibility for Inclusion in the National Register of Historic Places, 36 CFR 63; and Protection of Cultural and Historic Properties, 36 CFR 800.

The SMA is responsible for considering the undertaking's area of potential effects (36 CFR 800), including both direct and indirect effects. However, if the SMA requires the lessee/operator to conduct a cultural resource survey, the lessee/operator will only be responsible for conducting a survey for the area of proposed lease operations. The SMA will monitor for vandalism or other indirect effects and will conduct any necessary cultural resource evaluation or protective measures associated with such effects, but shall review the proposed lease operations within the timeframe requirements of Onshore Oil and Gas Order No. 1. The operator is still responsible for informing employees that vandalism, including artifact collection and unauthorized site disturbance, is illegal and punishable under the Archaeological Resources Protection Act and other statutes.

II. Project Planning

The SMA will be sensitive to cultural resource values when considering areas for oil and gas development. Areas that may contain significant cultural resources must be identified because such areas require protective restrictions. Areas of low sensitivity should be identified as posing less potential conflict for leasing and development.

III. Field Procedures

A. Lease wide or Unit wide Inventories. When a lease is to be extensively developed, it may be most efficient to develop a lease_wide approach to cultural resource inventory. Such approaches may include the following:

1. Block (or areal) surveys may be considered for areas where cultural properties occur in high densities or where intensive development is planned. Advantages exist for such Class III inventories and mitigation of anticipated adverse effects if the inventory is completed early for portions of the lease area. This will eliminate the need for individual project inventories. Although block or areal surveys are performed by the lessee/operator, close coordination with the Bureau must be maintained to assure survey design adequacy.

2. Surveys which utilize sampling methods (Class II inventories) may be used to develop a predictive model for a lease area. Such models may be used to reduce or eliminate further inventory requirements for the lease area, as well as to streamline mitigation strategies.

B. Determination of Need for Survey. To avoid unnecessary delays or expense, the lessee/operator should contact the SMA at least 15 days prior to submission of an Application for a Permit to Drill (APD) or Notice of Staking (NOS) to determine if a site-specific cultural resource survey is required prior to entry on the lease for lease operations. If a survey is required, the survey report is to be submitted as provided for in Onshore Oil and Gas Order No. 1. If the SMA has reason to believe that properties listed or eligible for listing in the National Register of Historic Places (NRHP) are present in the area of proposed lease operations, a survey will be required. Situations exist when the SMA may determine there is no reason to believe that listed or eligible properties are present, and a survey will not be required. These include, but are not limited to, the following:

1. Previous natural ground disturbance has modified the surface so extensively that the likelihood of finding cultural properties is negligible;

2. Human activity within the last 50 years has created new land surface to such an extent as to eradicate locatable traces of cultural properties;

3. Existing Class II or equivalent survey data are sufficient to indicate that the specific environmental situation did not support human occupation or use to a degree that would make further survey information useful or meaningful;

4. Survey at the Class III level has previously been performed, and records adequately documenting the location, methods, and results of the survey are available;

5. Natural environmental characteristics are unfavorable to the presence of cultural properties (such as recent landslides or rock falls).

In addition, a survey will not be required if the nature of the proposed action is such that

no impact can be expected on cultural resources eligible for or listed on the NRHP.

If a survey is required as determined by the involved SMA, then prior to any surface disturbance, the lessee/operator is to engage a cultural resource professional acceptable to the SMA to conduct a survey in the area of proposed lease operations. Cultural resource professionals contracted by the lessee/operator must consult the involved SMA prior to beginning fieldwork.

C. Survey Area. To assure compliance with the requirements for cultural resources protection (36 CFR Part 800), the minimum survey area shall be the area of proposed lease operations. The area of proposed lease operations is defined in the Surface Use Plan and shall include all areas to be physically disturbed by earthmoving activities, as well as areas where vehicle movement, off-loading of equipment, rehabilitation, etc., may be reasonably anticipated. For consistency among Federal agencies, a standard 10-acre survey area centered on the well site, plus access road and ancillary areas, is the norm. To ensure that an acceptable survey is completed, operators should be encouraged to notify the BLM and the involved SMA if they intend to survey less than 10 acres. The operator may choose to survey areas larger than 10 acres to provide a greater degree of flexibility for siting of facilities and to further reduce the possibility of the need for additional survey.

D. Split Estate. The Bureau of Land Management has the responsibility to consider the effects of oil and gas undertakings on cultural resources on private surface over leased Federal and Indian minerals. In such cases, the BLM or other involved SMA shall determine if a survey, evaluation, or mitigation of potential direct effects on cultural resources is appropriate. Copies of relevant survey and mitigation reports will be available to the landowner, and all collected artifacts will be returned to the landowner after a reasonable study period.

E. Snow Cover. The major factor in this decision should be the potential for adverse effect of the proposed action on cultural resources listed or eligible for listing on the NRHP in the area. Contact the SHPO to discuss this decision which might have unique applications in various parts of the State. Operators should be encouraged to survey an adequate number of locations when the ground is free of snow to support their winter drilling program, considering alternate sites and other contingencies.

F. Evaluation, Reporting and Mitigation Measures

1. General. The results of the survey shall be described in a report to be submitted to the authorized officer. These reports shall conform to standards described in Manual Section 8110 and Utah Handbook H-8110, and timeframes in existing cultural and oil and gas regulations.

2. Evaluation. All cultural resources located during the survey which cannot be avoided shall be evaluated, in part, using NRHP criteria (36 CFR 60) to determine the need for possible mitigation. Evaluations shall be sufficient to determine eligibility for the NRHP and to make decisions concerning mitigation.

3. Reporting. The survey report shall document survey methods; describe the survey area, including a map of the survey area (7.5 minute USGS quad sheet preferred) and cultural property maps at an appropriate scale; and document cultural properties, property evaluations, and proposed mitigating measures.

4. Mitigating Measures. The primary mitigating measure should be avoidance of the cultural property. If this cannot be accomplished, other measures may be required, including data recovery. When cultural resources are not present or are avoided, the reports will be processed by the SMA in 30 days or less. If cultural resources eligible for the NRHP are present but cannot be avoided, consultation with the SHPO and/or Advisory Council on Historic Preservation will be necessary if the undertaking meets one or more of the thresholds for case-by-case review specified in the Utah BLM-SHPO Protocol.

G. Previously Undiscovered Cultural Resources. Whether or not a survey has been done and notwithstanding that operations are being conducted as approved, the operator shall immediately notify the BLM or involved SMA if unexpected cultural resources are observed and shall avoid operations that would result in destruction of these resources. Disturbance of such discoveries is not allowed until the operator is directed to proceed by the BLM or involved SMA.

H. Vandalism. Impacts due to cultural resource vandalism directly attributable to the land user will be treated as law enforcement issues, and/or as administrative issues under current regulations governing revocation of permits. Operators should be advised to caution their field employees about vandalism penalties. Operators shall be held accountable for the conduct of their employees.

IV. Geophysical Operations

A. Policy. Geophysical operations can affect cultural resource values through direct impacts (blasting, vehicle movements, road building, etc.) and/or indirect impacts (collecting, erosion, increased access, etc.). Generally, geophysical proposals shall be evaluated on a case_by_case basis to determine appropriate cultural resource inventory or mitigation requirements. However, based on professional cultural resource specialist input, less than complete inventory may be appropriate, and programmatic approaches may be developed on specified land areas under an authorized officer's jurisdiction.

B. Requirements for Cultural Resource Inventory. The authorized officer may require cultural resource investigations on (1) Federally administered surface and/or (2) leased split estate lands (private surface/Federal minerals) where the operator is conducting explorations on behalf of the lessee if:

1. The proposed geophysical operations will be conducted off established roads and jeep trails, and/or will involve blading or other land modifications and disturbance.
2. Other serious damage or disturbance to soils and landforms by vehicle movement or other means will occur.
3. Vibrations from the use of explosives or other methods would endanger certain cultural properties such as standing structures.

Bureau approval is generally not required to conduct geophysical exploration operations on unleased split estate lands. Such operations are, therefore, ordinarily not subject to the inventory and consultation requirements of Section 106 of the National Historic Preservation Act. Occasionally, BLM restrictions on the location of geophysical operations on public lands and/or leased split estate will dictate the location of operations on unleased split estate. In such cases, the authorized officer must determine whether and to what extent cultural resource inventory and protection measures should extend onto the unleased lands. Any such extension should be limited to areas on the unleased private surface where it can be readily determined that the operator has no alternative choice because of physical constraints, legal access, or similar reasons, and where there is reason to believe that significant cultural properties could be affected.

Guidelines for Cultural Resource Compliance in Response to Mining Notices

I. Introduction

These guidelines cover the need for cultural resource compliance on areas to be disturbed by mining operations five acres or less in size. Such mining operations are subject to the surface mining regulations, 43 CFR 3809. The regulations require operators to notify the BLM of their intention to begin work, but BLM approval of the notice is not required.

II. Applicability of Section 106

Reviewing a mining notice does not involve discretionary decision-making on the part of BLM. Therefore, it does not constitute an undertaking as specified in Section 106 of the National Historic Preservation Act of 1966 and is not subject to the procedural requirements of 36 CFR 800.

However, 43 CFR 3809 specifically provides for the protection of cultural properties by prohibiting mining operators on claims of any size from knowingly disturbing or damaging them. Upon discovering a cultural resource, the operator must notify the authorized officer of the discovery and leave that resource intact until the authorized officer allows the operations to proceed. Within ten working days of notification by the claimant, the authorized officer must protect or remove the resource and allow the operations to proceed. (See 43 CFR 3809.2_2(e)(2).)

Consequently, while processing a notice is not discretionary, decisions made by the authorized officer subsequent to the discovery of cultural properties on a claim are discretionary and are subject to compliance with 36 CFR 800.

III. Determining Need for Inventory

A cultural resource field inventory need not be conducted in response to every notice. Field inventories should be conducted before mining operations are begun under a notice if BLM has reason to believe significant cultural resources may be damaged or destroyed by those operations.

Inventory efforts should focus on areas that are most sensitive. The area of potential effects covered under a notice should be surveyed if existing Class I or other inventory data indicate that comparable locales within a similar environmental situation have supported human occupation or use and have been found to contain significant cultural properties.

In cases where little is known of the project area or of similar environmental settings, the need for a cultural resource field inventory should be determined on the basis of professional judgment and is left to the discretion of the Field Manager.

A cultural resource field inventory would not be appropriate in response to a notice if one or more of the conditions specified in section II.C of Utah Handbook H-8110 applies to the area of potential effects.

IV. SHPO Consultation

The State Historic Preservation Officer need not be consulted in determining the level or extent of cultural resource inventory needed, if any, in response to a mining notice.

Mining notices must be reviewed within 15 days of receipt. If review of a notice reveals that National Register listed or eligible cultural properties may be adversely affected by the proposed activities, the operator must be notified immediately. The operator must be advised of the potential conflict and that knowingly disturbing cultural properties is prohibited by the surface mining regulations. If the cultural properties can be avoided, operations may proceed accordingly. If the cultural properties cannot be avoided, the authorized officer should take appropriate steps to mitigate adverse effects in accordance with Utah Handbook H-8120 (see also 43 CFR 3809.2_2(e) and Manual Section 3809 _ Surface Management).

VI. Corps of Engineers 404 Permits for Mining Under a Notice

Increasingly, operators are being required to obtain a permit (called a “404 permit”) from the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act prior to beginning operations under a notice. In such cases, the Corps is responsible for complying with Section 106 of the National Historic Preservation Act prior to issuing the 404 permit. The Corps cannot delegate its Section 106 responsibility to BLM, nor should the BLM represent itself as carrying out Section 106 compliance on the Corps’ behalf.

The BLM may, at its discretion, provide site record or inventory information to the Corps which the Corps may use in carrying out its Section 106 responsibilities. The BLM is not responsible for conducting a cultural resource inventory to assist an operator in obtaining a 404 permit but may do so at its discretion. If the Corps requires an operator to conduct a cultural resource inventory before the Corps issues a 404 permit, the inventory must be carried out under the authority of a Cultural Resource Use Permit issued by the BLM.

in Mineral Patent Cases

I. Introduction

These guidelines address cultural resource compliance when mining claims are patented under the 1872 Mining Law. Under that law, a mining claim is subject to patent if a qualified applicant has made a valid mineral discovery and has satisfied requirements regarding expenditures for assessment or improvements, survey of the claim, posting and publication of notice, and payment to the Government (complete requirements are set forth in 43 CFR 3860).

II. Applicability of Section 106

Issuing a mineral patent is not a discretionary action by BLM. BLM responds to a patent application by making a series of objective determinations of fact, and does not have the option to modify or deny an application which meets requirements. If BLM finds that conditions of law and regulations are met, title passes to the applicant. A patent application also cannot be denied for the purpose of protecting resources from mining activities, nor can the patent be conditioned or encumbered with provisions for resource protection.

Therefore, issuance of a mineral patent does not constitute an undertaking for purposes of complying with Section 106 of the National Historic Preservation Act of 1966 (NHPA) and is not subject to the procedural requirements of 36 CFR 800.

III. Responsibilities Prior to Issuing Patent

The BLM surface management regulations, 43 CFR 3809, provide for prevention of unnecessary or undue degradation of surface resources on unpatented claims. In cases where patent applications have been filed, the need for inventory and possible protection measures should be explored, as part of BLM's general cultural resource management responsibilities, before the claims pass out of Federal control. Relocation, detailed recordation or data recovery might be appropriate, depending on the nature and importance of the cultural property involved. Such measures, carried out prior to issuance of a patent, would be subject to compliance with Section 106 of NHPA.

Requirements for Cultural Resource Inventory of Prescribed Burn Areas

The Bureau has long recognized that cultural resource inventories carried out to comply with Section 106 of the National Historic Preservation Act should be tailored to the specific characteristics of each land use proposal. The level of inventory and field methods used should be commensurate with the number and classes of cultural properties known or expected to occur, the specific environmental conditions in the area to be inventoried, and the nature of the proposed land use activity.

In determining the appropriate inventory strategy for prescribed burn projects, fire intensity and duration, extent of surface disturbance, and the nature of known and expected cultural resources within the affected area should be considered. In general, prescribed burns on the arid lands BLM administers in Utah affect areas with light fuel loading and cause little surface disturbance. The resulting fires are of short duration and relatively low intensity. Impacts on cultural resources from prescribed fires can be significant for some cultural properties, such as flammable structures, but are less significant for the great majority of properties involved.

Field Managers will apply the following guidelines when determining the need for cultural resource inventory of areas proposed for prescribed burning:

1. An existing data review will be completed for all areas of potential effect.
2. A reconnaissance (judgmental) survey will be conducted within portions of proposed burn areas where existing data reviews suggest the following kinds of cultural properties are potentially present:
 - a. Flammable properties such as historic mining cabins, homesteads, ranch houses and associated features and/or,
 - b. Other properties that would be vulnerable to damage by fires of the intensity and duration of our prescribed burns. Such properties might include fragile rock art panels and friable stone features that would be particularly susceptible to thermal fracturing or other damage from fire.
3. Areas that will be subjected to surface disturbance will be inventoried at the Class III level. This includes fire control lines and fuel mixing areas that will be cleared by hand or machines.
4. Areas where fires are expected to exceed: (a) 900 degrees F at the ground surface, or (b) a Fireline Intensity of 400 BTU/sec/ft, will be inventoried at the Class III level.
5. In all cases, requirements for field inventory may be waived if they meet the conditions specified in Utah Handbook H-8110, Section II.C.

with the State Historic Preservation Officer will not be required for prescribed burn projects unless they meet one or more of the thresholds for case-by-case review specified in the Protocol.

I. Leasable, Saleable, and Locatable Mineral Activities

A. Leasable and Saleable Minerals. In split estate situations where the surface is privately owned and the mineral estate is Federal, the Bureau has the authority to take reasonable measures to avoid or minimize adverse environmental impacts that may result from mineral lease or mineral material sales activities authorized by BLM. Decisions made by BLM in such cases are subject to compliance with Section 106 of the National Historic Preservation Act.

B. Locatable Minerals. Locatable minerals are administered under 43 CFR 3809, which applies only to lands in which BLM administers both the surface and mineral estates. When Federal locatable minerals are located under private surface, BLM ordinarily exercises no regulatory authority over mining activities and has no responsibilities under Section 106 of the National Historic Preservation Act except in the following instances:

1. In split estate situations where the surface is Indian trust lands, locatable minerals are handled as though they were solid leasable minerals and are administered under the 43 CFR 3590 regulations. The operator must submit a mining plan for BLM's approval, which BLM reviews in consultation with the Bureau of Indian Affairs and the involved tribe. Since the BLM has the authority for approving the mining plan, it has lead responsibility (over the BIA) for Section 106 compliance.

2. On split estate lands patented under the Stockraising Homestead Act of 1916, where the mineral estate remains in Federal ownership, the 1993 amendments to that Act (in Public Law 103-23) require a mining claimant to submit a plan of operations for all activities other than casual use unless the surface owner consents in writing to the mining activities. This includes even notice-level activities that would not require a mining plan on BLM surface. If the claimant does not obtain the surface owner's consent, BLM must approve the mining plan before operations can proceed, and BLM's decision is subject to compliance with Section 106.

II. Geophysical Operations

A. Leased Split Estate. Geophysical operations on leased split estate lands (private surface/Federal minerals) require authorization from BLM and are therefore subject to Section 106 compliance. In meeting its responsibility to identify cultural properties, the BLM may require a geophysical operator to conduct a cultural resource inventory if:

- ▶ The proposed geophysical operations will be conducted off established roads and jeep trails and/or will involve blading or other land disturbance.
- ▶ Other serious damage or disturbance to the land will occur, or
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- ▶ Vibrations from the use of explosives or other methods would endanger cultural resources such as standing structures.

B. Unleased Split Estate. BLM approval is generally not required to conduct geophysical exploration operations on unleased split estate lands. Such operations are, therefore, ordinarily not subject to Section 106 compliance. Occasionally, BLM restrictions on the location of geophysical operations on public lands and/or leased split estate will dictate the location of operations on unleased split estate. In such cases, the BLM must determine whether and to what extent cultural resource inventory and protection measures should extend onto the unleased lands. Any such extension should be limited to areas on the unleased private surface where it can be readily determined that the operator has no alternative choice because of physical constraints, legal access, or similar reasons, and where there is reason to believe that significant cultural properties could be affected.

III. Split Estate with State Minerals and BLM Surface

On lands where the State of Utah owns the mineral estate under BLM surface, BLM has no authority to approve or disapprove mineral development activities. The operator must submit a mining plan to the Utah State Land Department for approval, but BLM has no discretion over how the minerals are developed and plays no part in approving the mining plan. As stated above, the 43 CFR 3809 regulations apply only to lands in which BLM administers *both* the surface and mineral estates. Therefore, mineral development on split estate where the State of Utah owns the minerals does not constitute an undertaking requiring compliance with Section 106.

IV. Land Exchanges Involving Split Estate

BLM has the authority to approve and regulate the extraction of leasable and saleable minerals on split estate lands. This means that if the Federal mineral estate on split estate lands is to be exchanged out of Federal ownership, private surface resources like cultural resources would lose the protection afforded by Federal laws. Such exchanges would, therefore, be subject to compliance with Section 106.

This is obvious for split estate lands patented under the Stockraising Homestead Act of 1916, as BLM has some discretionary authority over the mining of locatable minerals on those lands, as well as leasable and saleable minerals. It is less obvious, but equally true, for split estate lands patented under other laws.

While land exchanges involving private surface and Federal minerals are subject to Section 106 compliance, BLM should be reasonable in requiring cultural resource work on split estate where mineral estates will be exchanged. If there is high potential for mineral development or sale, cultural resource inventory and mitigation may be appropriate. Where potential for mineral development or sale is only moderate or low, an existing data review to characterize the cultural resource potential of the area may be all that is necessary because there is no way to predict where, or if, any impacts to cultural resources will occur in the future.

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V. Private Landowner Consent

On split estate, BLM has the duty and legal authority to comply with the National Environmental Policy Act and the National Historic Preservation Act before proceeding with an action which will affect the private surface. BLM also has a legal right of access to the private surface for the purpose of gathering the information BLM needs to comply with these laws. BLM may not condition its compliance with applicable Federal law on the consent of the surface owner.

If all other efforts fail, BLM can obtain a court order to gain access to the private surface for the purpose of complying with applicable laws, although this extreme option should be avoided if at all possible. In any case, the BLM must comply with Section 106 of the National Historic Preservation Act before authorizing an action that could affect cultural properties on private surface. If access is denied by the private landowner, the BLM may comply with Section 106 by obtaining the comments of the State Historic Preservation Officer (and the Advisory Council on Historic Preservation if any of the thresholds for Council review in the National Programmatic Agreement are met), and accepting an “adverse effect” determination if National Register listed or eligible properties will be adversely affected.

Abandoned Property on Mining Claims

I. Ownership and Use of Abandoned Property. For the purpose of determining ownership and BLM's legal authority to protect cultural resources, abandoned property on mining claims falls into one of three categories: (1) items attached to realty, (2) personal items embedded in the soil, and (3) personal items not embedded in the soil. Ownership and right to use such property is determined as follows:

A. Items Attached to Realty. This type of property includes permanent, nonmovable fixtures attached to the land such as cabins or other buildings. When the mining claim is abandoned, these items become the property of the U.S. Government. However, if a new mining claim is subsequently located on land containing the items, the new claimant has the same rights of exclusive possession to the items as he/she does to the other surface resources on the mining claim, i.e., the claimant doesn't own them but has the exclusive right to use them. The claimant has the right to use this property only if the use is directly related and incidental to actual mining operations.

B. Personal Items Embedded in the Soil. This type of property, which is not permanently attached to the land, includes such items as mining equipment embedded in the soil. When the mining claim is abandoned, these items become the property of the U.S. Government. If a new mining claim is located on land containing these items, the new claimant has the right to use the items if the use is directly related and incidental to actual mining operations.

C. Personal Items Not Embedded in the Soil. This type of property is found on the surface of the ground and includes such items as tools and vehicles. Upon abandonment of the mining claim, these items become the property of the finder rather than the U.S. Government. However, ownership of such abandoned property can be claimed by the U.S. Government under 40 USC 484, which requires that the government assert dominion and control over the abandoned property by taking possession of it. Until the government takes this affirmative action, the abandoned property may be claimed by the first person who finds it. If a new mining claim is subsequently located on land containing these items, and the new locator asserts possession over these items before the U.S. Government does, the items become the property of the claimant, regardless of whether the items are used in connection with mining operations.

II. Liability for Unlawful Use, Removal or Damage. If an abandoned mining claim is subsequently relocated, and the relocater removes, damages or uses property left on the abandoned claim, he/she may be subject to civil and criminal liability. Unauthorized removal and/or sale of property abandoned by a prior locator on an unpatented mining claim by a relocater can constitute a criminal act under 18 USC 641.

Section 106 Responsibilities Pertaining to Withdrawal Actions

I. Making, Modifying and Extending Withdrawals

Making, modifying and extending withdrawals are actions subject to compliance with Section 106 of the National Historic Preservation Act. If National Register listed or eligible properties are known or expected to be present in the area affected, Section 106 review must be completed before forwarding the proposed withdrawal for approval. Regulations at 43 CFR 2310.3-2(b)(3)(I) require the applicant to provide “A report on the identification of cultural resources prepared in accordance with the requirements of 36 CFR Part 800, and other applicable regulations.” This report, together with evidence of Section 106 compliance, is to be included in the case file. It may be included either as part of the environmental assessment or environmental impact statement, or separately with appropriate cross references.

If, during Section 106 review, no National Register listed or eligible properties are found to be present in the Area of Potential Effect, a memorandum to the case file documenting the finding is sufficient evidence of Section 106 consideration. If a withdrawal would directly or indirectly enhance the protection of cultural resources, a finding of no effect or no adverse effect would be appropriate. Consultation with the State Historic Preservation Officer (SHPO) will be necessary if the withdrawal action meets any of the thresholds for case-by-case review specified in the Utah BLM-SHPO Protocol.

Because lands to be withdrawn will remain under Federal control, and because the agency assuming jurisdiction will also assume Section 106 responsibility for subsequent actions on the withdrawn lands, an agreement between the applicant agency and BLM can satisfy BLM’s Section 106 obligations. The agreement should acknowledge the transfer of responsibility for future section 106 review to the agency benefitting from the withdrawal and should be part of the Memorandum of Understanding required by 43 CFR 2310.3-2(c).

If extending an existing withdrawal will not change present use, Section 106 review should conclude with a finding of no effect. The agency holding the withdrawal will continue to be responsible for Section 106 compliance concerning actions proposed on the withdrawn lands. The finding of no effect and the holding agency’s continuing responsibility should be documented in a memorandum signed by the BLM authorized officer and placed in the case file.

II. Revoking and Terminating Withdrawals

A Section 106 Review is required only for those revocations or terminations of withdrawals which would result in the lands being opened to a use or disposal that could take place without further approval by BLM or another Federal surface managing agency. The nature and extent of any needed cultural resource identification and protection measures will vary from case to case. The need for SHPO consultation should be determined in accordance with the Utah Protocol.

If a revocation or termination is merely a record clearing action, e.g., the lands have already passed into private ownership or the withdrawal is overlain by another withdrawal of equal or greater segregative effect, there would be no Section 106 obligation. Such determinations should be documented in the case file.

Protecting Cultural Resources along BLM Roads and County Roads through Public Lands

I. County Roads through Public Lands

Where a county has been granted a right-of-way for a road through public lands, and no cultural resource inventory was performed before the grant was issued, the BLM has no authority to require the grantee to conduct an inventory prior to widening the road unless the terms and conditions of the grant so stipulate. Any proposed work which extends outside the boundaries of the existing right-of-way, however, should be treated as a new application requiring analysis under the National Environmental Policy Act and compliance with the National Historic Preservation Act.

This does not mean that the grantee has the right to damage or destroy archaeological resources within the right-of-way when maintaining or widening the road. The servient estate within the right-of-way, including RS 2477 rights-of-way, is still Federal land subject to the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. Field Managers are responsible for informing county road departments that counties do not have the authority to damage archaeological resources on public lands, even within an existing right-of-way, and that they can be held in violation of the Archaeological Resources Protection Act if they do so. Managers should suggest to counties that the best way to reduce their liability is to have an adequate cultural resource survey performed prior to widening a road through public lands so that effects on significant resources can be avoided or mitigated.

II. Bureau of Land Management Roads

For BLM roads, cultural resource inventories and evaluations consistent with Utah Handbook H-8110 must be completed before widening or other new surface disturbance occurs to ensure that significant cultural properties are protected from inadvertent damage or destruction. This requirement does not apply to normal road maintenance activities in which surface disturbance is confined to the existing roadbed.

Cultural Resource Compliance on Grazing Permit/Lease Renewals

Compliance with Section 106 of the National Historic Preservation Act on all grazing permit/lease renewals will be carried out consistent with the 1980 *Programmatic Memorandum of Agreement between the Bureau of Land Management, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Livestock Grazing and Range Improvement Program*. Specific procedures for compliance are as follows:

1. A Class I Literature Search as described in Manual Section 8110.21A2 will be completed for each allotment on which a permit or lease is being considered for renewal. This includes reviewing current professional literature, regional overviews, appropriate historic contexts, and checking files to learn if any surveys have been conducted and cultural resources recorded within or near the undertaking's area of potential effect.
2. The information obtained in the Class I Literature Search will be compared with the livestock grazing information for each allotment to determine whether it is likely that impacts to cultural resources are occurring. Field Office cultural heritage specialists should work directly with rangeland management specialists to identify areas of ground disturbing impacts on the allotment such as water sources and areas where livestock congregates for extended periods of time or where the presence of livestock may cause other physical impacts on cultural features.
3. If there are no known cultural resources in areas that are being heavily impacted by livestock, and the cultural heritage specialist determines that the areas hold minimal potential for the presence of cultural resources, then no further inventory work need be done. However, if impacts are occurring in areas which are likely to contain vulnerable cultural resources and there has been no previous field survey, a Class III survey of the areas being impacted will be conducted.
4. When historic properties are identified as being impacted by livestock grazing, and the characteristics which make these properties eligible for the National Register of Historic Places are being compromised, mitigation measures will be outlined in the NEPA document for the allotments involved. Mitigation measures may include, but are not limited to: constructing fences, changing grazing seasons, changing livestock numbers, maintaining or reconstructing existing range improvements, or constructing new range improvements to reduce or eliminate impacts to cultural resources.
5. Grazing permits and leases will include specific mitigation or management actions designed to avoid adverse effects to cultural resources, if needed, as terms and conditions of the renewed permit or lease.

STANDARDS FOR PREPARING DATA RECOVERY REPORTS

Upon completion of data recovery, results shall be documented in a professionally prepared report containing the following information:

1. Title Page. For projects not done by BLM personnel, the title page should include a notation indicating the source of funds used to conduct the reported work, the agency and office for whom the work was performed, and the number of the Cultural Resource Use Permit under which the work was conducted.

2. Table of Contents. Include a table of contents with a list of numbered tables, figures and plates.

3. Abstract. Provide a 250-word or less abstract of the data recovery report. The abstract must outline the report contents and refer to specific highlights of the findings as follows:

- a. Agency. Identify the lead Federal agency for the project and any other Federal and State land managing agencies involved.
- b. Project title. Provide the name of the project.
- c. Project description. Briefly describe the proposed action, including planned construction, transfer of title, need for ancillary facilities, etc.
- d. Location. Identify Township, Range, and Section, name of nearest city or topographical feature (if applicable), USGS map source, and name of the county in which the project is located.
- e. Cultural properties involved. Provide IMACS site numbers for all cultural properties subjected to data recovery.
- f. Results. Briefly and concisely describe the results of the data recovery, e.g., what was learned about the time period during which the sites were occupied, activities that took place at the sites, relationship between these sites and others in the area, and whether the research questions could be addressed with the data recovered.

4. Background. Provide a brief summary of the project and surrounding environment as a context for the data recovery work. Synthesize and reference previous documents relating to the area, especially inventory and evaluation reports, data recovery reports and other compliance documents.

5. Cultural Resource Summary. Describe the involved cultural properties including cultural materials present, physical attributes, environmental setting, cultural/temporal affiliation and function. Identify the BLM use categories and significant values assigned to the sites.

6. Research Orientation. Discuss the research orientation for the data recovery work performed including the regional research questions and specific study topics investigated.

7. Description of Work Performed. Completely and accurately describe the fieldwork and analysis methods used.

8. Results and Evaluation. Present the results of fieldwork and analysis and discuss these in the context of the original research design. Evaluate the success of the data recovery work performed in terms of its contribution to regional research questions and the objectives of the data recovery plan.

9. Recommendations. Suggest future data recovery methods and recommend research questions for future cultural resource work. Comment on the most appropriate use(s) for similar cultural properties.

10. Appendices. Include appendices describing any special studies performed and a report of work hours expended by task.

11. Bibliography. Include a bibliography of all references cited in the report following the American Antiquities style.

12. Maps. Include map(s) showing at a minimum: study area boundaries, properties investigated, units collected and/or excavated.

13. Illustrations. Include sufficient drawings, profiles and figures to illustrate the data.

14. Tables. At a minimum, include a tabulation of materials recovered, samples collected and items curated.

16. Photographs. Include photographs as needed to illustrate the data. All photographs must be labeled and recorded on Cultural Resource Photograph Logs (form UT-8110-3).

(June 1999)

BUREAU OF LAND MANAGEMENT
UTAH STATE OFFICE

CULTURAL RESOURCE CONDITION & VANDALISM RECORD

Site No.: UT : : () Other No.:

Recorder

Date

LOCATIONAL INFORMATION (Plot all roads, settlements, recreation areas and facilities on map; key to photos):

T N S, R E W, Sec QQ Q

Types of Roads (Use following types): Highway, Paved, Gravel, Dirt, 4-Wheel Trail

Road Type	Name/No.	Distance to Site	Road Type
Name/No.	Distance to Site		

Types of Habitation Areas (Use following definitions):

Ranch, Farm or House

Hamlet (Pop. 250)

Village (Pop. 250

-

500

)

Town (Pop. 500-5000)

City (Pop. 5000-50,000
50,000)

Metropolis (Pop. over

Type	Name	Distance to Site	Type
<u>Recreation Areas</u> (Campgrounds, points of interest, parks)			

Type	Name	Distance to Site	Type
<u>Other Facilities</u> (Pipelines, powerlines, fencelines, range improvements, etc.)			

Type	Name	Distance to Site	Type
PHYSICAL PROTECTION MEASURES (List, describe and plot location on site map: any ARPA signs, site fences, barriers, etc.)			

PHOTOGRAPHS TAKEN: YES NO (Attach Cultural Resource Photograph Log, form UT-8110-3)

(June 1999)

BUREAU OF LAND MANAGEMENT
UTAH STATE OFFICE

CULTURAL RESOURCE CONDITION & VANDALISM RECORD

Site No.: UT : () Other No.:

CONDITION INFORMATION (Show location, extent of looting & vandalism types on site maps; key to photos)

Types of Looting and Vandalism (Use following types):

	Potholes	Backhoe Trenches	Bullet Holes
Postholes	Graffiti	Prying/Chisel Marks	
Probeholes	Bulldozing	Other	

Description (Type, location, quantity, extent, and recommendations):

OTHER SPECIFIC SOURCES OF DETERIORATION (Describe type, location and extent):

PHYSICAL EVIDENCE (Key to site map and photos)

Footprints (Types): Vibram Sole Cowboy Boot Sneakers Barefoot Dog Other Animal (Specify)

Type	Size	Number of Individuals
Type	Size	Number of Individuals
Type	Size	Number of Individuals

Trash (Use following types): Cigarette Butts, Beverage Cans & Pull Tops, Food Wrappers, Other Trash

Type Brand

Type Brand

Type Brand

Tracks (Circle those present): Car Truck Motorcycle Heavy EquipmentTools:Suspect(s) Name, Address, Physical Description:Vehicle Make: , Model , Year , Color , License No. & State

INFORMANTS, WITNESSES (Name, address, telephone):

COMMENTS: